

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEROME L. ALLEN,

Plaintiff,

No. C 09-5067 PJH (PR)

v.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Deputy CHIEN; Lt. FEEMAN; Capt.
MIAMOTO; and Sgt. KROLL,

Defendants.

Plaintiff, a prisoner at the San Francisco County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

Venue is proper in this district because a substantial part of the events giving rise to the action occurred in this district. See 28 U.S.C. § 1391(b).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (per curiam) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. The United States Supreme Court has recently explained the "plausible on its face" standard of *Twombly*: "[w]hile legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff presents two claims: (1) that Muslims such as himself are not allowed congregational prayer; and (2) that defendant Chien lost his temper and threw plaintiff's Quran and other "religious paperwork" across the day room, damaging the Quran.

In his first issue, plaintiff does not allege any facts linking the named defendants with the refusal to allow Muslims to gather for noon prayer on Fridays. "Even at the pleading stage, "[a] plaintiff must allege facts, not simply conclusions, that show that an individual was personally involved in the deprivation of his civil rights." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff thus has failed to state a claim against any defendant on this issue.

1 In his second issue, plaintiff does not say that deputy Chien's conduct was motivated
2 by religious hatred or disrespect. As it is presently phrased, then, he states only a claim for
3 damage to property, a simple state-law claim that is not cognizable under Section 1983.
4 See *Parratt v. Taylor*, 451 U.S. 527, 535-44 (1981) (state employee negligently lost
5 prisoner's hobby kit), *overruled in part on other grounds*, *Daniels v. Williams*, 474 U.S. 327,
6 330-31 (1986); *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (intentional destruction of
7 inmate's property). He therefore fails to state a claim against any defendant.

8 CONCLUSION

9 1. For the foregoing reasons, the complaint is **DISMISSED** with leave to amend, as
10 indicated above, within thirty days from the date of this order. The amended complaint
11 must include the caption and civil case number used in this order and the words
12 AMENDED COMPLAINT on the first page. Because an amended complaint completely
13 replaces the original complaint, plaintiff must include in it all the claims he wishes to
14 present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
15 incorporate material from the original complaint by reference. Failure to amend within the
16 designated time will result in the dismissal of these claims.

17 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
18 court informed of any change of address by filing a separate paper with the clerk headed
19 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
20 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
21 Federal Rule of Civil Procedure 41(b).

22 **IT IS SO ORDERED.**

23 Dated: April 9, 2010.



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PHYLLIS J. HAMILTON
United States District Judge

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